IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 676 of 2006
In
SPECIAL CIVIL APPLICATION No. 15105 of 2004
with
CIVIL APPLICATION Nos. 4678 of 2006
And
CIVIL APPLICATION Nos. 4902 of 2007
In
LETTERS PATENT APPEAL No. 676 of 2006
In
SPECIAL CIVIL APPLICATION No. 15105 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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MANUBHAI CHHAGANBHAI THAKORE - Appellant(s)
Versus
UNION BANK OF INDIA & 2 - Respondent(s)

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Appearance :
MR SHALIN N MEHTA for Appellant(s) : 1,
MR KM PATEL for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 03/04/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

1. The appellant – original petitioner has filed this Letters Patent Appeal under Clause-15 of the Letters Patent challenging the order passed by the learned Single Judge on 23.6.2005 in Special Civil Application No.15105 of 2004 whereby the petition was dismissed with cost of Rs.5,000/-.

2. Civil Application No.4678 of 2006 is filed

praying for stay against the operation and implementation of the order dated 23.6.2005 passed by the learned Single Judge in Special Civil Application No.15105 of 2004 and further praying for stay against the order dated 5.1.2002 issued by the opponent – Bank whereby the applicant – original petitioner's resignation was accepted with immediate effect.

3. At the time of admission hearing of the Appeal and while considering the Civil Application, this Court has passed an order on 1.5.2006 permitting the applicant – original petitioner to submit the representation to the opponent – Bank. The Court further observed that as and when such a representation is made, the Bank shall consider it. The Court further made it clear that while the appellant may not have a right to insist that he ought to be taken back in service, that does not mean that the Bank

does not have a discretion to consider the facts of the case sympathetically and consider the appellant's request on merits. The Court further stayed the operation of the order of the learned Single Judge directing the appellant to pay the respondent – Bank cost of Rs.5,000/-.

4. Pursuant to the said order the appellant – applicant has made a representation before the respondent authorities on 27.7.2006 for permitting him to revoke his resignation and to resume the service with the respondent – Bank. The said representation was decided by the respondent – Bank on 27.2.2007 and for the reasons stated in the said order, the request of the appellant – applicant for taking him back in the service was not acceded to and the representation was rejected.

5. Being aggrieved by the said order dated

27.2.2007, the appellant – applicant has filed Civil Application No.4902 of 2007 for quashing and setting aside the order dated 27.2.2007 and seeking direction to the respondent – Bank to decide afresh the applicant's representation dated 27.7.2006 keeping in mind the observations made by this Court in its order dated 1.5.2006.

6. The brief resume of facts of the case, which give rise to the present proceeding is that the appellant was appointed in the respondent – Bank as a peon on 27.7.1987. He was promoted by the respondent – Bank as cashier-cum-clerk in May, 1988. On 11.12.2001 appellant offered to resign from the services of the respondent – Bank citing illness as a cause. He requested the respondent Bank to offer appointment to his eldest daughter in his place since he had a large family of 8 members to maintain. The appellant again wrote to the respondent Bank

on 26.12.2001 to allow him to retire from the services of the respondent Bank with immediate effect. The appellant was informed in writing by the respondent No.3 that the appellant's offer of resignation, vide letter dated 11.12.2001, was accepted by the respondent Bank after waiving the notice period. The appellant wrote a letter to the respondent Bank on 31.1.2002 to allow him to withdraw/revoke/cancel his resignation. The appellant stated that when he had the offer on 11.12.2001 to resign from the services of the respondent Bank, he was under the influence of mental illness / psychological disorder. The respondent Bank vide its letter dated 3.4.2002 did not accede to the request of the appellant to allow him to withdraw his resignation. Instead, the respondent Bank settled the dues of the appellant by paying him a meagre amount of Rs.18,000/- towards his retiral dues after deducting the outstandings payable by the

appellant to the respondent – Bank. The appellant, thereafter, wrote letters dated 7.1.2003, 3.5.2003, 9.7.2003 and 9.2.2004 either personally by him or through Mr.Mohanbhai Javiya, the then Member of Parliament. Request made by him in all these letters was turned down and hence the appellant has filed Special Civil Application No.15105 of 2004 on 12.10.2004 under Article-226 of the Constitution of India challenging the decision of the respondent Bank of not permitting him to revoke/cancel/withdraw his resignation. The said Special Civil Application was dismissed by the learned Single Judge with cost of Rs.5,000/- to the respondent Bank. It is this order which is under challenge in the Letters Patent Appeal.

7. Mr.Shalin N. Mehta, learned advocate appearing for the appellant has submitted that the learned Single has committed patent error of fact and of law in rejecting the

writ petition filed by the appellant and in denying relief to the appellant. He has further submitted that the appellant had not deliberately suppressed the second letter dated 26.12.2001 by which he had offered to resign from the services of the Bank with immediate effect, as observed by the learned Single Judge. He has further submitted that the learned Single Judge has failed to appreciate that reference of the said second letter dated 26.12.2001 addressed by the appellant to the respondent Bank was made in the letter dated 5.1.2002 of the General Manager by which the appellant was informed that his resignation from service had been accepted by the Bank with immediate effect. He has further submitted that the learned Single Judge has dismissed the petition of the appellant on erroneous grounds and by observing that the issues involved therein are disputed question of fact and Court cannot go into it while exercising power

under Article-226 of the Constitution of India. He has further submitted that the respondent Bank had never disbelieved the say of the appellant that he was not mentally stable on the day he had offered to resign from the services of the Bank. He has further submitted that there was enough evidence on the record of the case to justify the appellant's plea that on the day when he offered to resign from the services of the Bank, he was mentally unstable or not in a proper frame of mind. He has further submitted that there was enough circumstantial evidence on the record of the case to come to the conclusion that the appellant was unduly influenced to offer his resignation from the services of the Bank. He has further submitted that there was no suppression of material fact on the part of the appellant by omitting to place on record the said second letter dated 26.12.2001 by which he offered to resign with immediate

effect. He has further submitted that the respondent Bank has given no mind to the grave hardship that the appellant would face if he was not allowed to withdraw/revoke his offer of resignation. The respondent Bank was repeatedly informed by the appellant that his family would be reduced to penury if he was not allowed to resume his services with the Bank. He had more than 13 years left before superannuation. He had a huge family of 8 members (himself, wife, 5 daughters and 1 son) to maintain. There was no other earning member in the family. Moreover, he had taken loans of sizable amounts from the respondent Bank as a result of which he would be left with a paltry sum constituting his retiral dues if he was forced to resign from the Bank. These were relevant mitigating factors which ought to have been found in the decision making process of the respondent Bank before rejecting the appellant's request of allowing him to cancel/revoke his

resignation. He has further submitted that the learned Single Judge has failed to appreciate that as it clearly appears from the various representations sent to the respondent Bank on appellant's behalf, the appellant was unduly influenced into making the offer of resignation. He was also under undue influence when he was called upon by the Branch Manager – Mr.Makwana to endorse on the acceptance letter of the respondent Bank dated 5.1.2002. On account of the appellant's mental instability, he was not in a position to appreciate his conduct and the untold hardship that he and his family would face if he was allowed to resign from service. This means that while offering his resignation and while endorsing the acceptance letter of the Bank, there was no free consent on the part of the appellant. As he was under undue influence, the appellant was entitled under Section-19A of the Indian Contract Act to have the

agreement/contract set aside. Thus, his resignation was voidable at his option under Section-19A of the Indian Contract Act.

8. Irrespective of the aforesaid submissions in the main Letters Patent Appeal, Mr.Shalin Mehta has submitted that in pursuance of the order dated 1.5.2006 passed by this Court the appellant has made a representation on 27.7.2006 to the concerned respondent – Officials of the Bank. A copy of the said representation was not sent to the General Manager, HRM Department, Nodal Regional Office, Union Bank of India, Ahmedabad, who has passed the impugned order dated 27.2.2007. This General Manager was neither a party to the petition nor to the Letters Patent Appeal. He has further submitted that on 11.1.2007, a quarterly meeting by the Bank Officials with the representatives of the All India Union Bank SC/ST Employees' Association, was held at the Central Office

at Mumbai. One Mr.R.R.Sonara attended the said meeting from Ahmedabad as a representative of the said All India Bank SC/ST Employees' Association. In the said quarterly meeting, the case of the appellant was discussed as an additional issue. He has further submitted that Mr.R.R.Sonara, who has taken up the issue of the appellant's demand for reinstatement in the Bank was assured by the Bank Officials in the quarterly meeting that the applicant's case would be considered sympathetically and in proper spirit as directed by this Court vide order dated 1.5.2006. Neither the appellant nor the said Mr.R.R.Sonara was told that the ultimate order on the appellant's representation would be passed by the General Manager, HRM Department, Nodal Regional Office, Union Bank of India, Ahmedabad. He has further submitted that since the appellant's representation had been sent to the respondents, naturally, the appellant had

reason to believe that an official order would be passed either by the respondent No.1 or the respondent No.2 keeping in mind the discussion having taken place in the quarterly meeting of 11.1.2007. He has, therefore, submitted that the authority, who has passed the impugned order dated 27.2.2007 was not even present in the said quarterly meeting of 11.1.2007. Mr.Mehta has further submitted that all of a sudden, on 27.2.2007, an order was passed by the General Manager, HRM Department, Nodal Regional Office, Union Bank of India, Ahmedabad, rejecting the appellant's representation dated 27.7.2006. The appellant was shocked to receive the said order as he had already anticipated that the final order would be passed either by the respondent No.1 or by the respondent No.2. However, as it turned out, the final order was passed by an authority of the Bank who was not even joined as a party respondent either in the writ petition or in the Letters

Patent Appeal. He has further submitted that the impugned order runs in the teeth of the oral order dated 1.5.2006 passed by this Court. He has further submitted that the impugned order passed by the authority or person of the Bank to whom the appellant's representation dated 27.7.2006 was not made or addressed to. The impugned order does not even refer to the various observations made by this Court in the order dated 1.5.2006 pursuant to which the appellant's representation was made. He has further submitted that the impugned order even does not refer to the hard facts stated by the appellant in para-20 of his representation dated 27.7.2006. He has further submitted that there is not a word of sympathy in the impugned order though this Court specifically directed the Bank not to curb its discretion of considering the facts of the appellant's case sympathetically. He has further submitted that the impugned order is illegal

and without jurisdiction as the deciding authority, i.e. General Manager, HRM Department, Nodal Regional Office, Union Bank of India, Ahmedabad has not shown any authority conferred upon it either by the respondent No.1 or the respondent No.2 to decide the appellant's representation dated 27.7.2006. He has lastly submitted that the impugned order is inconsistent and incompatible with the High Court's order dated 1.5.2006. This Court directed the Bank to decide the appellant's representation. The Bank would obviously mean the respondent No.1 or the respondent No.2. The word “Bank” used by this Court in its order dated 1.5.2006 could not have meant an authority or person of the Bank who was not before the Court. He has, therefore, submitted that the impugned order passed by the General Manager, HRM Department, Nodal Regional Office, Union Bank of India, Ahmedabad, deserves to be quashed and set aside.

9. Mr.K.M.Patel, learned advocate appearing for the respondent Bank on the other hand has supported the order passed by the learned Single Judge in Special Civil Application No.15105 of 2004 and has also supported the order passed by the General Manager, HRM Department, Nodal Regional Office, Union Bank of India, Ahmedabad and submitted that looking to the well established principle laid down by the Hon'ble Supreme Court, once the resignation is offered by an employee and it is accepted by the employer and all dues have been received by the employee, the contract is completed and it is not permissible for the employee to revoke/cancel or withdraw such resignation. He has, therefore, submitted that no interference is called for while exercising appellate power under Clause-15 of the Letters Patent and hence the Letters Patent Appeal as well as Civil Application moved by the appellant

deserves to be dismissed and/or rejected.

10. We have heard Mr.Shalin Mehta, learned advocate appearing for the appellant and Mr.K.M.Patel, learned advocate appearing for the respondent Bank. We have also perused the petition alongwith the annexures attached therewith and affidavit-in-reply as well as affidavit-in-rejoinder placed before the learned Single Judge. We have also gone through the present appeal memo as well as two Civil Applications filed by the appellants. We have also perused the impugned judgment of the learned Single Judge passed in Special Civil Application No.15105 of 2004 and the order passed by the General Manager, HRM Department, Nodal, Regional Office, Union Bank of India, Ahmedabad pursuant to the representation made by the appellant.

11. As far as the issue involved in the Letters

Patent Appeal is concerned, the appellant has filed the petition before the learned Single Judge of this Court challenging the action of relieving the petitioner from service pursuant to acceptance of his resignation and requiring the respondent Bank to treat him as having continued in service. The appellant by his letter dated 11.12.2001 submitted his resignation on the ground of health and requested for settlement of his dues. When the appellant has submitted his resignation he was not reported on his duty on account of ill health. After submitting his resignation on 11.12.2001, the appellant, by his letter dated 26.12.2001 requested for accepting the resignation with immediate effect and released him from the service immediately, since he was not keeping good health. The appellant has deliberately not produced the copy of the letter dated 26.12.2001 and has suppressed this fact. On the contrary he has suggested in the petition

that the resignation was to come into effect after 3 months from the date of submission of his resignation, which again is factually incorrect. The letter of resignation dated 11.12.2001 did not specify any date from which the appellant wanted to leave the services. The appellant being award staff, notice period required is one month and not 3 months as suggested by the appellant. The appellant having resigned by his letter dated 11.12.2001, requested the bank to accept resignation immediately and release him as per the letter dated 26.12.2001. Acting on the request of the appellant the respondent Bank accepted his resignation and communicated acceptance of resignation as per the letter dated 5.1.2002. The notice period of 30 days would have expired on 10.1.2002, whereas the appellant was relieved on 9.1.2002 pursuant to the memorandum dated 5.1.2002 accepting his resignation. There was no withdrawal of resignation before

10.1.2002. As per the request of the appellant, the resignation was accepted with immediate effect vide memorandum dated 5.1.2002 and balance notice period was waived. It is only after the appellant was communicated acceptance of his resignation and was relieved from his services, he purported to seek withdrawal of his resignation by communication dated 31.1.2002. The respondent Bank is, therefore, justified in taking the stand that it was not open for the appellant to request for withdrawal of resignation after the same was accepted and communicated to him. The reliance was rightly placed on the judgment of the Hon'ble Supreme Court in the case of North Zone Cultural Centre and Another Vs. Vedpathi Dineshkumar, 2003(2) LLJ 839 (SC) and P.Lal Vs. Union of India and Another, 2003 (2) LLJ 164 (SC), wherein it is held that the resignation becomes effective from the date of acceptance and the same cannot be

withdrawn after it is accepted. Even non-communication of acceptance does not make the resignation inoperative. After the appellant was communicated the acceptance of his resignation and he was relieved from the service, the appellant has accepted his retirement dues without any demur or protest. The appellant was communicated acceptance of resignation with immediate effect as per letter dated 5.1.2002 of the Bank. The appellant applied for payment of P.F and gratuity admissible to him. A gross amount of Rs.4,23,497.35 ps was admissible and payable to the appellant towards his P.F. Gratuity and other legal dues. However, there were different loans outstanding and payable by the appellant such as clean loan, P.F.Loan, advance against LFC, credit society loan, salary advance, personal loan, house repairing loan etc. The total amount recoverable from the appellant was Rs.4,05,311.34 ps. After adjusting the

outstanding loan, balance amount has been paid to the appellant which he has accepted without any demur or protest. We are, therefore, of the view that the appellant has voluntarily submitted his resignation and his resignation having been accepted and communicated was not entitled to withdraw the same subsequently. Moreover, he having accepted the legal dues unconditionally even after his letter dated 31.1.2002 purporting to withdraw his resignation, cannot now challenge the action of the Bank of acceptance of his resignation and seek directions that he be continued in service of the respondent Bank.

12. We are also not persuaded with the submission made by Mr.Shalin Mehta to the effect that the alleged offer of resignation made by the appellant was not based on free consent. The word 'consent' is defined under Section-13 of the Indian Contract Act, 1872

(for short 'the Act') which says that two or more persons are said to consent when they agree upon the same thing in the same sense. The word 'free consent' is defined under Section-14 of the Act, which says that consent is said to be free when it is not caused coercion, as denied in Section-15, or undue influence, as defined in Section-16, or fraud, as defined under Section-17, or misrepresentation, as defined in Section-18 or mistake, subject to the provisions of Sections-20, 21 and 22. Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake. Mr.Mehta's main thrust of the argument is that the offer of resignation was given under undue influence. The word 'undue influence' is defined under Section-16 of the Act, which says that a contract is said to be induced by 'undue influence' where the relations subsisting between the parties are

such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. Sub Section-2 of Section-16 says that in particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another – (a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress. Sub Section-3 of Section-16 says that where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall be upon

the person in a position to dominate the will of the other. Mr.Mehta's further argument is that when a consent is not a free consent and it is based on undue influence in that case, provision of Section-19A of the Act would come into play. Section-19A says that when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just. Mr.Mehta has, therefore, submitted that since the offer of resignation was made by him under undue influence, the agreement is a contract voidable at the option of the appellant and the appellant is agreeable to refund the entire amount with suitable rate of interest. On payment of such amount, the acceptance of resignation made by the

respondent Bank deserves to be quashed and set aside. We find no substance in this argument. Admittedly, no evidence has come on record to show that because of the illness of the appellant, the mental capacity of the appellant was either temporarily or permanently affected. There is no application of Section-16 of the Act to the facts of the present case and hence there is no question of invoking Section-19A of the Act.

13. As far as rejection of the representation made by the appellant is concerned, the respondent Bank has considered the said representation and passed a detailed order. Simply because another General Manager has passed the said order, it cannot be said that it is not the decision taken by the respondent Bank. As a matter of fact, the appellant was serving at Keshod which falls within the jurisdiction of Gujarat Region and

the person who has passed the order on representation of the appellant was having jurisdiction and hence it cannot be said that he has no authority to pass such order. The respondent Bank has considered that the appellant has mainly advanced grounds that the resignation was submitted on account of mental instability and chronic depression and that he was facing financial hardship as he has a huge family of 8 members to maintain. There was no other earning member in his family and that he has received only Rs.18,000/- as a full and final settlement at the time of his retirement due to the sizable amount of outstanding loan. He has not opted for pension and that he has no other sources of income nor has any agricultural land to survive etc. That there was no complaint against him till the date of his resignation and that he had put in 24 years of service and still 13 years of service is left out and that the post from which he had resigned was

not filled in by the Bank etc. The respondent Bank has also considered the certificate issued dated 3.7.2006 of Medical Officer, Primary Health Center, Chitravad, Dist. Rajkot produced by the appellant. According to this Certificate, appellant was suffering from severe headache and ingammia and was mentally disturbed on 13.11.2001. The respondent Bank has also considered the certificate dated 6.7.2006 of Referral Hospital, Keshod by which it was certified that he was physically fit for duties. After considering the representation and the aforesaid certificates, the respondent Bank has taken the decision that the proof produced by the appellant in support of his case that he was suffering mental disorder at the relevant time does not inspire confidence. The certificate dated 3.7.2006 of PHC, Chitravad is in respect of alleged illness on 13.1.2001. There is no contemporaneous medical certificate produced

by the appellant. Moreover, the certificate dated 3.7.2006 reports that the appellant was suffering from severe headache and ingammia. That cannot make the resignation submitted by the appellant on 11.12.2001 as having been given under mental disorder as represented by the appellant. In fact, the record of the case shows that after submitting resignation on 11.12.2001, the appellant by his letter dated 26.12.2001, requested the Bank to accept his resignation with immediate effect and there is nothing on record to show that the appellant was mentally ill on 26.12.2001 also. As per the request, resignation was accepted and the same was communicated to him as per communication dated 5.1.2002 and he was relieved from 9.1.2002. Thereafter, he made separate application on 30.1.2002 for payment of provident fund and gratuity. He was paid legal dues in April 2002, which he accepted without any demur or protest. The conduct of the appellant shows that

resignation was a conscious and considered decision and not given in haste or under any mental disorder as represented by the appellant. The appellant has not produced any proof in support of his mental illness. The certificate dated 3.7.2006 and fitness certificate dated 6.7.2006 appear to have been obtained for creating the mitigating circumstance.

14. With regard to the second ground of representation of financial hardships ensuing on account of cessation of employment pursuant to resignation, the Bank has taken the decision that the Bank cannot accept the representation and continue the appellant in the employment on the said ground after he has ceased to be an employee and accepted the legal dues. His employment has come to an end. There are Rules and Regulations for recruitment in the Bank. Employment of the appellant having come to an end, the Bank

cannot treat him in service contrary to the rules and regulations governing appointment.

15. The Bank has further taken into consideration the fact that the appellant has mentioned in his representation that he has got only Rs.18,000/- as full and final settlement of his account with the Bank. However, as per the record, the gross amount of legal dues payable to the appellant was Rs.4,23.497.35 ps. There were various loans outstanding and amount recoverable from the appellant towards different loans were Rs.4,05,311.34 ps. The amount of legal dues payable and loans adjusted gives a reasonable basis for an inference that the appellant might have resigned to liquidate huge loan outstanding from him.

16. The Bank has also considered the ground with regard to undue influence and taken the view that it cannot be accepted as there was

nothing on the record to substantiate the same. Even otherwise also, the respondent Bank has found that the said ground is made out as an afterthought for salvation of his case. The respondent Bank has also taken into consideration that the Bank can appoint a person only in accordance with the Rules and Regulations and there is no rule which permits the Bank to re-employ a person who has tendered resignation which is accepted by the Bank and the relationship of employer and employee ceased to exist pursuant to the said acceptance of resignation.

17. We do not find any infirmity or illegality in the decision taken by the respondent Bank while rejecting the representation of the appellant. We, therefore, do not think it fit and proper to interfere in the order passed by the learned Single Judge or in the order passed by the respondent Bank in respect of the representation made by him

during the pendency of the Letters Patent Appeal.

18. In the above view of the matter, the Letters Patent Appeal is dismissed. Consequently, both the Civil Applications are also rejected. While dismissing the Letters Patent Appeal, we modify the order passed by the learned Single Judge only to the extent that the order regarding imposition of cost of Rs.5,000/- is hereby quashed and set aside. Accordingly, the appellant is not required to pay any cost.

(A. M. KAPADIA, J.) (K. A. PUJ, J.)

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